UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON, et al. Plaintiffs v. AMERICAN FOAM CORPORATION, et al. Defendants	CIVIL ACTION NO. 03-335-L (adopting C.A. No. 04-312-L)

DEFENDANT CELOTEX CORPORATION'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' NOTICE OF ADOPTION OF THIRD AMENDED MASTER COMPLAINT

Plaintiffs in the above captioned matter have adopted the Third Amended Master Complaint in *Albert L. Gray, Administrator, et al v. Jeffrey Derderian, et al,* C.A. No. 04-312-L, in its entirety, as stated in their "Notice of Adoption of Third Amended Master Complaint (Station Nightclub Fire Litigation)", filed February 28, 2006. Defendant Celotex Corporation hereby repeats and incorporates by reference herein its Answer to the Third Amended Master Complaint (in *Gray, Administrator, et. al. v. Derderian, et. al.*, C.A. No. 04-312-L), as if fully set forth herein, as its response to the *Guindon* Plaintiffs' Adoption of the Third Amended Master Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Celotex Corporation asserts that Plaintiffs failed to state a claim upon which relief can be granted pursuant to F.R.C.P. 12 (b) (6).

SECOND AFFIRMATIVE DEFENSE

Celotex Corporation asserts lack of personal jurisdiction as a bar to this action F.R.C.P. (12) (b) (2).

THIRD AFFIRMATIVE DEFENSE

Celotex Corporation asserts that Plaintiffs did not exercise due care and that the negligence of Plaintiffs contributed to or caused the injuries or damages complained of and, therefore, the recovery of Plaintiffs is barred in whole or in part, or is subject to diminution under the comparative negligence law of the State of Rhode Island.

FOURTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the Plaintiffs assumed known risks and, therefore, Plaintiffs have no recovery against Celotex Corporation.

FIFTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that any alleged injuries or damages sustained by Plaintiffs were not directly or proximately caused by any acts, errors, or omissions of Celotex Corporation, but were the result of third persons for whom Celotex Corporation is not legally responsible.

SIXTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that any alleged injuries or damages sustained by Plaintiffs were caused by the intervening and/or superseding acts of parties or nonparties for whom Celotex Corporation is not legally responsible.

SEVENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that an award of punitive damages against Celotex Corporation would be unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and applicable provisions of the Rhode Island State Constitution.

EIGHTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that under the laws applicable to this case and to the extent claimed by Plaintiffs, no punitive damages can be recovered by Plaintiffs as punitive damages are appropriate only when there is proof that the acts complained of were done with malice and bad faith, and with the intent to cause harm.

NINTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts the affirmative defense of the mitigation of damages and, therefore, Plaintiffs are precluded from recovering damages.

TENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the SoundStop board product referred to in this Complaint, allegedly manufactured and/or supplied by Celotex Corporation was used in a manner which was unforeseen, used in a manner which was not intended, was altered, and/or modified and, therefore, this action is barred pursuant to R.I.G.L. §9-1-32.

ELEVENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts the affirmative defense of spoliation in the event any tangible matters which are the subject of this Complaint, have not been preserved in their immediate post-accident condition.

TWELFTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts this action is time barred pursuant to R.I.G.L. § 9-1-29, because the product at issue may have been manufactured and/or purchased more than ten years prior to the fire.

THIRTEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the SoundStop board product referred to in this Complaint, allegedly manufactured and/or supplied by Celotex Corporation was misused and/or abused and, therefore, this action is barred.

FOURTEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the alleged dangers were open and obvious and, therefore, this action is barred.

FIFTEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts the "sophisticated user" doctrine and/or the principles of §388 of the Restatement (Second) of Torts and, therefore, this action is barred.

SIXTEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the SoundStop product that allegedly caused injury conformed to the state of the art with respect to design, development, manufacture, production and warnings at the time of sale and, therefore, Plaintiffs' actions are barred in whole or in part.

SEVENTEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts the Bulk Supplier doctrine as set forth in the Restatement (Third) of Torts §5 (1998) and, therefore, Plaintiffs' claims are barred and/or limited.

EIGHTEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that it gave no warranties, express or implied, to Plaintiffs or to anyone acting on their behalf and that any warranty rights Plaintiffs are asserting were limited by an express limited warranty.

NINETEENTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that Plaintiffs' claims based on allegations of express or implied warranty are barred for the reason that no sale of goods occurred to Plaintiffs, and that any warranty rights Plaintiffs are asserting were limited by an express limited warranty.

TWENTIETH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the claim for breach of warranty is time barred pursuant to R.I.G.L. § 6A-2-725, because more than ten years may have passed from when the board product referred to in this Complaint was purchased for use or consumption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Celotex Corporation asserts Plaintiffs failed to give notice of any alleged breach of warranty as required by R.I.G.L. § 6A-2-607 and, therefore. Plaintiffs' actions are barred.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Celotex Corporation hereby incorporates the affirmative defenses of the co-Celotex Corporations in this action to the extent that such affirmative defenses are not inconsistent with the affirmative defenses asserted by Celotex Corporation.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Celotex Corporation respectfully reserves the right to amend this Answer to add such additional affirmative defenses, cross-claims, and third-party Complaints as may be disclosed during the course of discovery in the above captioned matter.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Celotex Corporation asserts that the Complaint was not filed within the time required by the applicable statute of limitations, and therefore must be dismissed.

PRAYER FOR RELIEF

WHEREFORE, Defendant, Celotex Corporation, demands judgment, dismissing the claims against it, with prejudice, and that it be awarded costs and such other relief as the court deems just.

JURY CLAIM

Defendant Celotex Corporation demands a trial by jury as to all allegations set forth in the Third Amended Master Complaint, as adopted by the *Guindon* plaintiffs, and any other pleading in this case.

Dated: July 18, 2006

Respectfully submitted,
Defendant Celotex Corporation,
By its Attorney,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON THE 18TH DAY OF JULY, 2006, I CAUSED TO BE SERVED A COPY OF THE WITHIN DOCUMENT VIA ELECTRONIC MAIL, UNLESS OTHERWISE INDICATED, TO THE FOLLOWING COUNSEL OF RECORD:

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